K 62
23-5-56

1949.

File No. O. Watan/49

K

Legal DEPARTMENT
IT BRANCH

Subject:—

P-33
E

Opinions under the Bombay office Act, 1874.

File No. O. Watan/49

Std. Sectt. Slip 24 B e.

62-A

CONTENTS.

Legal Department File No. O. Watan/49

Sr. No.	Compilation No.	Subject.	Pages.
		Bom. Hereditary Offices Act, 1874.	
1	O.No.510 15-1-49	Regulation XVI of 1827-- Act XI of 1843-- Watan property in Mudhol State-- Whether females can succeed as heirs whether it would be correct and legal to set aside the Rajasaheb's order and restore the possession of the lands to the applicant ---	1-8
2	O.No.2853 11-3-49	Gadkari Inam of Javli -- Whether the auction sale of Gadkari Inam Lands can be set aside and the lands restored to the original holders in order to prevent resumption of the same. ------	9-12
3	R.I.No.1604 3-2-49 O.No.3857 9/4/49	Sec. 23 -- Whether there is any legal objection to fixing the remuneration of the Officiator under-- and ~~recurring~~ /recovering the same from the Watandar.	13-16
4	O.No.7035 25/6/49	Sec. 36 --- Right of an adopted son to hereditary Office --- Whether request of the mother can be considered by Govt. ---	17-18
5	R.I.No.7324 16/5/49 O.No.7610 8-7-49	Secs. 8-13 23, 79----- Resumption Rules---- 4,5-- Whether there would be any lega-l objection to resuming the land under Rule 4 on the ground that the profits of the land are unnecessarily high for the remuneration of the service performed.	19-24
6	O.No.8706 3-8-49	Secs. 17,23 & 81--- Whether the Inamdar can be compelled to pay remuneration of a Patel	25-28
7	O.No.13248 21/11-49	Whether the law of primogeniture will have any application with the abolition of all watans, Inams and Saranjams -----	29-30
8	R.I.No.1643 10-10-49 O.No.14029 5-12-49	Patil Watan of Bhanas- Hiware, taluka Newasa Dist. Ahmednagar-- Whether the sanction accorded by the R.D. to abolish the Watan is in order ---	31-34

PSM. 16/5
5 4C.

Succession of females as heirs to watan property in Mudhol State

Regulation XVI of 1927

Act XI of 1843; and

Bombay Hereditary Offices Act, 1874.

Office of the R.L.A.

It appears that the view taken by the Special Officer, Political and Services Department, is correct. The order of the Rajasaheb, Mudhol is based mainly on the ground that until Act V of 1886 was adopted by the Mudhol State in 1914, females were not excluded from inheriting watan property in support of which the decision of the Bombay High Court in 1868 is relied upon admitting at the same time that according to the spirit and letter of the Regulation of 1827, a female could not hold a watan. It is admitted that Regulation XVI of 1827 was in force in Mudhol State. Clause (2) of section 28 of that Regulation provides: "Official emoluments enjoyed by a co-sharer in a hereditary district or village revenue office shall not leave the family in which the office is vested and if they revert to a sole proprietor or occupant of the office, they shall thenceforth follow the provisions of the preceding clause which prevents alienation of any watan by any incumbent". The interpretation put up on this provision by the Rajasaheb that it does not preclude inheritance by or through females is not correct. It was ruled by the Sadar Divan Adawlat in 1832 that according to the spirit and letter of Regulation XVI of 1827 a female could not hold a watan. This interpretation was strictly adhered to until the decision of the Bombay High Court in Bai Suraj Vs. Government of Bombay, 8 Bombay High Court Reports, 83, where it was held that inasmuch as Act XI of 1843, permitted females to appoint a deputy to perform service, the Legislature had recognised their right to hold the watan and the ruling of the Sadar Divan Adawlat in 1932 was no longer applicable. In the present case, the

Special Officer has stated that Regulation XI of 1843 was not applied to the State. If that be correct - and, if necessary, the correctness of that statement may be carefully verified since it is the only point upon which the ultimate decision must turn, the very basis on which the ruling of the Bombay High Court in Bai Suraj Vs. Government of Bombay rested will disappear, and the effect would be that the ruling of the Sadar Diwani Adawlat in 1832 would continue to be operative in Mudhol State, and the fact that Act V of 1886 was adopted by the Mudhol State as late as 1914 would not make any difference. Consequently, the legal position in Mudhol State would be that females could not hold a watan property. In the present case it is apparent from the geneology that the property in question which represents half of the watan lands was held by Timmangouda of the junior branch, after whose death in 1865 his widow Girewa came to be in occupation. Her position would, therefore, be as widow of the last male holder Timmangouda. After her death the lands would go tothe senior branch of Balangouda as the junior branch of Timmangouda had become extinct. Consequently, the present applicant who belongs to the senior branch and in whom the right to officiate vests would be the proper heir to inherit the watan lands. Female heirs of Girewa can have to claim to the watan lands. It is stated in the Rajasaheb's order that "it cannot also be said that there is an established custom precluding daughters or daughters' heirs from the inheritance to thewatan property governed by the Watan Act." This statement is not quite correct. As stated above, RegulationXVI of 1827 precluded females from inheriting the watan property. It was observed in Bai Suraj Vs. Government of Bombay, 8 Bombay High Court Reports, 83 on p. 87 that "custom ordinarily follows the law and so long as a female could not succeed by law, it almost

necessarily follows that she could not succeed by custom." The Judicial Officer, Mudhol, in the appeal between the present contending parties has stated that the policy of excluding females from inheriting watan property is a long standing one, and a decision of the Government to that effect was produced, and the Court could take judicial notice of such decision as it illustrated a practice or rule by the State Government in the matter. In the circumstance it is apparent that according to law as well as the policy of Government followed in Mudhol State, Females could not succeed to the watan property as heirs, and consequently the decision of the Rajasaheb is prima facie illegal and invalid.

2. The next question raised for R.L.A.'s consideration is whether it would be correct and legal to set aside the Rajasaheb's order and restore the possession of the lands to the applicant. As stated above, the Rajasaheb's order is opposed to law. Further it is also opposed to the decision of the Judicial Officer in the appeal between the parties in respect of succession to the watan lands. It was observed in Rex. Vs. Spiss, 1916 1 king's bench 595 as follows: "This is the King's Court. We sit here to administer justice and to interpret the law of the realm in the King's name. It is respectful and proper to assume that once the law is declared by competent judicial authority, it will have to be followed by the Crown." It is, therefore, clear that the decision of the Judicial Officer holding females as excluded from inheriting watan property should have been respected by the Rajasaheb and given effect to. In the

circumstances it appears that this is a fit case for setting aside the order of the Rajasaheb and restoring possession to the applicant.

Id/- P.M.L.
14/1

Remembrancer of Legal Affairs.

U.R. to R.D. through P.& S.D., No. 510 dated the 15th January 1949.

PSM. 15/5
4C

Office of the R.L.A.

Gadkari Inam of Javli.

The first question raised for R.L.A.'s consideration is whether the auction sale of Gadkari Inam Lands bearing S.Nos. 20/4, 20 (1/4 share) and 194 can be set aside and the lands restored to the original holders in order to prevent resumption of the whole of the Gadkari Inam.

2. It appears that these Gadkari Inam Lands were resumed and full assessment was levied thereon. For the recovery of the full assessment and local fund cess, these lands were put to auction sale and disposed of. In view of the result of the litigation in Satara Civil Suit No. 1383 of 1939, the resumption has to be considered as illegal with the result that the levy of full assessment for the recovery of which these lands were sold was unlawful. Consequently the sale of these lands for the recovery of full assessment will have to be set aside by Government under section 211 of the Bombay Land Revenue Code. On payment of the judi due on these lands Government may set aside the auction sale and restore these lands to the persons from whom they were resumed. So far as the rayatwari land S.No. 408, pot hissa 5, is concerned it would not be possible to distrurb the auction sale unless the land was sold for the recovery of the assessment of the aforesaid Gadkari Lands.

3. Gadkari Lands are ordinarily continuable on the hereditary tenure to the lawful holder in 1855 and to his lineal male descendants: See Art 43 of Joglekar's Land Alienation Manual. The effect of the High Court decision in appeal No. 27 of 1940 is that Gadkari Inam was granted to Bhairav's family, that is to say, to Bhairav and his brothers. This would not mean that the females would also be entitled to

claim a share in the lands comprised in the grant. Government was not a party to that litigation and would not be bound by the High Court decision in that litigation. Consequently, Government may treat this Gadkari Inam as hereditarily continuable to the male descendants of Bhairav and his three brothers and if any part of the grant is found to be in possession of persons other than the male lineal descendants of Bhairav and his brothers. Governme-nt can take action for resumption.

Id/- P.M.L.
10-3

Remembrancer of Legal Affairs.

U.R. to R.D.,No;, 2853, dated the 11th March 1949.

PSM. ~~EXX~~ 15/5
4C

R.I.No. 1604 dt. 3-2-49

Submitted.

Pleade see Collr's letter at pp. 31-33 and the Commr's note at pp. 41-43, R.D. note at pp. 45-47 ante, The officiating Kulkarni of Mugalikatti in Bankapur taluka requests Govt. that his potgi which he has not received since 1940 may be recovered from the Inamdars and paid to him. The village Mugalikatti is an unsurveyed and unsettled inam village of class IV mf in Shiggaon taluka of Dharwar District. S.Nos. 49 and 50 which are Kulkarniki Kadim Inam lands of class VI-B and which bear an assessment of Rs. 26/- and 'nafa' of Rs. 2/- are in possession of R.W.No. 2 Gurunath Ganesh. The question is whether Gurunath Ganesh is liable to pay the Kulkarniki officiator's remuneration. It is urged by the Kulkarni hakdar that he is liable to pay towards the remuneration an amount equal to the difference between the full survey assessment and judi in respect of S.Nos. 49 and 50 assigned for service. The difference works out to Rs. 2/- and it is contended this is according to the orders in G.L.No. 10028-F/39, dated 6-6-44, in the case of the Kulkarniki officiator of Talawai, taluka Dharwar, R.D. states that this case is distinguishable on facts because the remuneration in the Talwai case was based on the difference between the assessment and judi as the same was adequate according to the Wingate scale; whereas in the present case, it comes to Rs. 2/- only and falls short by Rs. 28-8-0 according to the remuneration arrived at by the Wingate scale. The Collr. holds that the deficit amount of Rs. 28-8-0 will have to paid from the Govt. treasury and the Commr. thinks that the remuneration can be fixed by the Collr. under sec. 23 of the Bombay Hereditary Offices Act and recovered from the Watandar. R.D. is of the view thatsince the watan lands are kadim kulkarni inam, Govt. is not debarred from recovering the remunerationfrom kulkarni hakdar. The R.L.A. is requested to advise in the matter.

SM. 15/5

Office of the R.L.A.

Fixing of remuneration.

Bombay Hereditary Offices Act, 1874, Section 23.

S.Nos. 49 and 50 of the village Mugalikatti are not stated to be subject to scale judi. They may therefore fairly be presumed to be assigned property for the remuneration of the officiator (see Phadnis' Watan Act, p. 117). Under the second para. of section 23 of the Bombay Hereditary Offices Act, 1874, the Collector is free to fix the official emoluments of an officiator out of the existing assigned watan property according to his discretion; and under para. four with the sanction of Government he may alter the assignment and may increase or diminish it in value. There appears therefore no legal objection to fixing the remuneration of the officiator under section 23 and recovering the same from the watandar. The view taken by the Commissioner, S.D. in his endorsement at pp. 41-43 ante appears to be correct.

Id/- P.M.L.
8-4

Remembrancer of Legal Affairs.

U.R. to R.D.,No. 3857 dated the 9th April 1949.

PSM. 15/5
4C

Watan Act
Section 36

Right of an adopted son to office.

Office of the R.L.A.

In view of the Privy Council decision in Anant Bhikappa Vs. Shankar Ramchandra (1944 Bom. 116) the old proposition that section 2 of the Bombay Act V of 1886 as amended by Act XI of 1923 cannot be restrospective so far as the right of the mother to adopt after the death of her unmarried son is concerned is no longer valid. However, since section 36 of the Bombay Hereditary Offices Act is a special provision prescribing the mode of determining succession to a hereditary office, the applicant may be informed that her request will be considered by Government only if she produces a decree of the Civil Court regarding the claim of her adopted son.

Id/- P.M.L.
24-6

Remembrancer of Legal Affairs

U.R. to R.D.,No.,7035, dated the 25th June 1949.

PSM. 15/5
4C

Submitted.

S.No. 124 of Chhadwad, measuring 3A. 27G. and assessed at Rs. 14/- was assigned for remuneration of the service of the Police Patel of Chhadawad(Madalpur) in the City Taluka. It stands in the name of Muljibhai Naranbhai one of the representative matdars of the village. Col. 11 of the entry in the Land Alienation Register in respect of this S. No;. (Old S.No. 29) is blank. The Collr. of Ahmedabad therefore states that it is not possible to ascertain in which form the sanad who issued and the original sanad is stated to be not available. Muljibhai Naranbhai, the holder of the land, permanently leased the land to one Parmanand Jagjivandas, by a registered sale deed on an annual rent of Rs. 3,300/-. On representation by another representative matdar, the Prant Officer N.D. declared the alienation null and void on 22-1-1938 and ordered that since the land is in long posses ion of Muljibhai it would be inequitable to resume it from him and to restore it to the Officiator but the full rent should be levied from the alienee under sec. 11 (A) of the Watan Act, that rent should be regarddd as profits of the watan and rateable contribution should be levied thereof for. The renumeration of the Officiator. Muljibhai being aggrieved preferred an appeal to the Collr. but the the appeal was rejected by the Collr. who ordered that the land s be allowed to remain in his possession on payment of contribution equal to survey assessment. Muljibhai then filed a Civil Suit in the court of The First class Sub-Judge, Ahmedabad who dismissed the suit with costs on 23-12-41. He then prefer e an appeal to the District Judge but dismissed the same with costs on 31-4-43. He has now applied to Govt. for permission for granting this land on a

long term lease under section 9. This request was refused by Govt. and the Commr. N.D. was requested report whether possession of the land should be resumed or not. The Collr. states that since permission for a long term lease was granted to him his present request for selling the land to D.L.B. Ahmedabad need not be considered. On further reference, both the Collr. and the Commr. agree that there is no objection to re-esume the land, remove it from the category of inams and dispose it of as non-agricultural plot to the D.L.B. Ahmedabad after cancelling the Collector's order dated 21-1-1939 allowing the land to remain in his possession on payment of contribution equal to the survey assessment. R.D. states that there is no objection to following the course suggested by the Commr. The H R,L.A. is requested to advice in the matter.

Sd/- P.S.Nadkarni.
23/6

A.L.R.

PSN. 15/5
4C

Resumption of watan on behalf of Government.

Bombay Hereditary Offices Act, 1874 Sections 8-13-, 23, 79 Resumption Rules, 4,5.

Office of the R.L.A.

Resumption of watan lands under sections 8 to 13 of the Bombay Hereditary Offices Act, 1874 is only for the benefit of the watandars. The resumption contemplated in the present case is not for the benefit of the watandar but is intended to be on behalf of Government itself. Such resumption can be ordered either under Rule 4 or Rule 5 of the Resumption Rules of 1908 framed by Government, which rules are saved by section 1 of the Bombay Hereditary Offices Act (see Vishnu Vs. Shankar, 35 Bom. L.R. page 114). Resumption under Rule 4 can be legally feasible under certain circumstances specified therein, one of which being "for the service performed remuneration derived from profits or enjoyment of such land is unnecessarily high". Under Rule 5 resumption can be ordered if lands held for service have become alienated contrary to the provisions of the Bombay Hereditary Offices Act. It is true that Muljibhai, who is in possession of the assigned as watan land in the present case, permanently leased out the land to an outsider in 1938 and that lease was declared null and void by The Collector in 1939. Consequently, if resumption has to be made under Rule 5 of the Resumption Rules, the Collector's Order of 1939 declaring the alienation null and void and allowing Muljibhai to continue in possession of the land subject to the payment of contributions to the officiator will have to be set aside by Government under section 79 of the Bombay Hereditary Offices Act. Ordinarily there would not have been much legal difficulty for passing such order as the powers of Government under section 79 are very wide. However, we must take note of the developments since the order of the Collector was passed in 1939. Muljibhai filed a suit contending that the order of the Collector and void and to that

PSM. 15/5
4C

suit Government was a party. It is therefore clear that the legality f or propriety of the Collector's order was sufficiently brought to the notice of Government so far back as 1939 or 1940; and in the course of that litigation it appears from the R.L.A.'s letter No. 10665, dated the 4th December 1940 addressed to the Collector of Ahmedabad that there was an offer for compromising the suit and that Government was prepared to allow the conversion of the tenure of the land into ryotwari provided Muljibhai was willing to pay the occupancy price. During all these years, Government did not take any action to resume the land under Rule 5 although Government had due notice of the Collector's order. In view of Government's inaction during the last ten years resumption of the land at this stage under Rule 5 is not advisable. There would, however, be no legal objection to resuming the land under Rule 4 on the ground that the profits of the land are unnecessarily high for the remuneration of the service performed. The annual rent of the land is more than Rs. 3,000/- and obviously such profits would be considered as unnecessarily very high for the remuneration of the service when the contribution equal to the assessment of the land as ordered by the Collector in 1939 is considered as appropriate remuneration of the officiator and was charged on the land. Government may, therefore, direct the Collector to resume the land and sanction the alteration of the remuneration under section 23 of the Bombay Hereditary Offices Act to payment in cash which might be equalto the assessment of the land.

PSM. 15/5
4C

Id/- P.M.L.
7-7

Remembrancer of Legal Affairs

U.R. to R.D.,Eo., 7610, dated the 8th July 1949.

Office of the R.L.A.

question whether the Inamdar can be compelled to pay remuneration of a Patil.

Bombay Hereditary Office Act, 1874 sections 17,23&81.

The question raised at the Conference of the Commissioners was "Whether in cases where the office is a hereditary one and the remuneration was hitherto paid by the Inamdar the Provisions of the Watan Act read with the Gujerat Matdars Act, 1887 will apply and the remuneration can probably be recovered from the Inamdars under the authority of orders contained in Government Resolution Revenue Department No. 4520, dated the 12th July 1882. Revenue Department appears to be of the view that the Inamdar may be Held responsible for the payment of remuneration to a Patil. R.L.A. is requested to advise.

Government Resolution, Revenue Department, No.4520 dated the 12th July 1882 does not appear to be applicable to such cases for what was considered in that resolution was whether the remuneration of a Deputy appointed by the Collector could be recovered from the Inamdar In the R.L.A.'s opinion No. 685, dated the 14th June 1882, accepting which opinion, Government issued the aforesaid resolution, it was stated that the payments by the Inamdar to village Officers should be held to be presumably Watan property to which the provisions of section 17 of the Act may be applied, and if the Office of Shastapur patel is deemed to be hereditary for the purposes of the Act, it follows that had the appointment of the present officiator been made with the previously obtained sanction of the Government there would have been no objection to the payment of his remuneration being insisted on under the provisions of section 17 of the Act. Section 17 of the Bombay Hereditary Offices Act was considered by the Bombay High Court in Anant Vs; the Secretary of State for India (19 Bom.581) where it was held: "It is the commutation of these customary fees or perquisites in money or in kind and fluctuating payments that is provided for by sections 17 to 21, and the Collector has no power under section 17 to impose new

Govt. Res. 4273 40.

burdens on the land-owners in cases where the payment being constant already there is nothing to determine". It is clear from this provision that section 17 would not be available for enforcing the recovery of the remuneration of an officiator from the Inamdar.

Section 81 provides that all recoveries of profits from land assessment, emoluments or penalties under this Act may be made as provided by any law. for the time being inforce relating to the recovery of the land revenue. It follows from this provision that unless the remuneration of an officiator in an Inam village is recoverable under this Act it would not be legally feasible to enforce payment from the Inamdar under section 81. Section 23 empowers the Collector to fix the emoluments of Officiators and direct the payments thereof to such officiators for the time being. Consequently, it is only in cases where the Collector has fixed the remuneration of an Officiator in an Inam Village, section 81 would be available for enforcing the recovery thereof from the Inamdar. If, however, the Collector in an Inam Village under section 23, it appears that section 81 cannot be resorted to and the officiator will have to be left to seek his own remedy for recovering his remuneration from the Inamdar.

Id/- P.M.L.
2-8

Remembrancer of Legal Affairs.

J.R. to R.D.,No.,8706, dated the 3rd August 1949.

PSM. 15/5
4C

Office of the R.L.A.

bolition of the
ule of Primoge-
iture in Watans.

With the abolition of all Watans, Inams and Saranjams which appears to be impending, the law of primogeniture will have little or no application.

Id/- P.M.L.
20-11

Remembrancer of Legal Affairs.

U.M.to R.D., 'M' Br. No. 13248 dated the 21st November 1949.

PSM. 15/5
4C

No. 16438
10-10-49

Submitted.

The Commissioner C.D. in his letter at page 3 ante has requested for sanction to abolish the Patil Watan at Bhanas-Hiware, Taluka Newasa, District Ahmednagar. By G.R.R.D. No. 10670 dated 9-11-1906 Government had approved of the recommendation of the Commissioner C.D. to appoint one Mahomad Sharif to officiate as Patil in the said village. This Mahomad Sharif was the son of Mahomad Husain who was the original representative Watandar when the Watan was framed in 1881. Mahomad Sharif's appointment was subject to the conditions that there was no Watan and no claim to serve as of right could be recognized and that appointments to officiate as Patils would be made so long as members of Mahomad Sharif's family were fit and willing to serve. The said mahomad Sharif died about 31 years ago without leaving any Bhaubands or males ancestor. Hence the Commissioner's proposal.

2. In G.R.R.D. No. 8677/33, dated 27-8-1938, Government had issued instructions that when a Watan has wholly lapsed to Government it should be abolished and not allowed to remain in existence. Under the last para of Sect. 22 of the Bom. Hereditary Offices Act, 1874, when a Watan or part of a Watan has lapsed to Government, or is lawfully resumed by Govt. or when the right of any particular family to hold a Watan does not exist, it is lawful for Govt. to assign the Watan to such person or persons as they think fit. The R.L.A. in his opinion No. 6168, dated 2-8-1938 has expressed the view that under this Sect. it was open to Govt. either to assign a Watan which has lapsed to Govt. to any person or to abolish it altogether. In this case not only Mahomad Sharif was informed as long back as in 1906 that there was no Watan and that no claim to serve as of right could be

recognized but there is no male member of his family left behind. Consequently as proposed by U.S.R.D. the orders issued in S.R.R.D. No. 8677/33 dated the 27-8-1938 would be applicable in this case and there would be no legal objection to abolishing the Watan.

Id/- D.V.D.
1-12-49

A.L.R.

Id/R.T.K.
1/12

R.L.A.

Id/- P.M.L.
2/12

PSM. 16/5
4C

Office of the R.L.A.

Patil Watan of Bhanas-Hiware, taluka Newasa, District Ahmednagar --- abolition of---

Seen and returned. The sanction accorded by the Revenue Department to abolish the watan is in order.

Id/- P.M.L.
3/12

Remembrancer of Legal Affairs.

U.R. to R.D.,No., 14029, dated the 5th December 1949.

PSM. 16/5
4C